IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 153 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NASIRKHAN MEHMOODKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 153 of 2003

MR CHETAN B RAVAL for Petitioner No. 1

MR SJ DAVE AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 12/05/2003

ORAL JUDGEMENT

1. Age old contest between liberty and detention has once again surfaced in this petition at the instance of

the petitioner-detenu by invocation of the provisions of Article 226 of the Constitution of India.

2. Liberty is a basic and dynamic jurisprudential concept and philosophy, and therefore, it has constitutional and statutory safeguards for the preservation, projection and protection of the liberty of an individual. Since it is a dynamic aspect and concept, continued research is necessary to regularly assess the changing dimension and dynamics of such a constitutional right, personal right of liberty guaranteed under the Constitution, the highest law of the land.

3. Preventive detention has long standing and deep rooted base in this country. The preventive detention is a serious in-road and encroachment on the liberty of a person. All human beings are born with free and equal rights. All human beings are, no doubt, gifted by their creator with certain unalienable, nontransferable, nonnegotiable natural rights. Justice, liberty and equality have been pursuits of human kind, and are sine qua non for organized civilized society. Preservation of human life is the most important right for an individual. The personal liberty has been claimed, and, as such, has been acclaimed as a part of the right to life, and for the development and protection of this concept, Courts have taken utmost care to protect various aspects of personal liberty as part of protection of life. Article 21 provides for everyone, right to life, liberty and security of person. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22(5) also provides requisite and sufficient safeguards while encroaching upon the right to personal liberty of an individual. Under various detention laws, the competent authorities are empowered to pass order of detention, provided material and important constitutional and statutory safeguards are observed, and subjective satisfaction has been reached on an objective assessment of sufficient material. With this prefatory profile of the preventive detention law, it would be interesting and imperative to assess, evaluate and adjudicate upon the challenge against the detention order in this petition on the basis of the material emerging from the record.

4. Factual projection:-

By order dated 24-09-2002, the petitioner was detained on the ground that the petitioner is a "dangerous person". The petitioner made representation

to the detaining authority on 24-10-2002. The said representation is yet not decided till date. The petitioner demanded legible copies of various documents. The said documents were also not supplied till date. The petitioner also demanded certain relevant documents and statements of various persons connected with his case. However, these documents were also not supplied to him. The petitioner was in judicial custody in connection with the offence registered as C.R.No.100/02 with Gaikwad Haveli Police Station and C.R.No.44 of 2002 with Vatva Police Station when the order of detention was passed.

5. The petitioner has, therefore, challenged the detention order dated 24-09-2002 passed by the respondent no.2 authority in purported exercise of powers under subsection (2) of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short PASA Act') on the ground that the detention order is arbitrary, illegal, void ab-initio, suffering from vice of non-application of mind and also in violation of Articles 21 and 22 of the Constitution of India and in violation of the provisions of the PASA Act. The detaining authority has considered the petitioner as dangerous person within the meaning of Section 2(c) of the PASA Act. According to the detaining authority, the activities of the petitioner are prejudicial to the maintenance of public order as he is considered to be a habitual offender as also on the ground that various criminal cases are pending, which are denied in the course of hearing on the strength of the record.

6. The main contention, which is advanced in this petition on behalf of the petitioner, is that the detaining authority has passed the questioned detention order without proper application of mind. It has been submitted that the detaining authority has passed the detaining order relying upon criminal cases registered against him. On the date of recording of detention order, the detenu was in judicial custody. The detaining authority has considered this aspect by observing that there is likelihood of moving an application for bail, without any satisfaction for reaching the conclusion for passing the detention order. In absence of any cogent material about the likelihood of the detenu being released on bail, and the pretext that there is likelihood of presentation or submission of an application of bail for being released by the detenu, ipso facto a subjective satisfaction could not have been constituted for reaching the conclusion leading to passing of the detention order. This proposition of law is very well expounded, explored and established by

catena of judicial pronouncements. The ratio is propounded in the latest decision of the Supreme Court in Amratlal and other v. Union Government through Secretary, Ministry of Finance and others (AIR 2000 SC 3675).

7. In the case of Amratlal (supra) it has been succinctly expounded that there must be cogent material before the detaining authority recording the detention order that the detenu is likely to be released on bail. Likelihood of detenu moving an application for bail for being enlarged on bail is not a cogent material, and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood of being released on bail" is different from "likelihood of his moving an application for bail". In this decision following three decisions are also considered:-

1. Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi 1994 Supp (1) SCC 597
2. Kamarunnissa v. Union of India (1991) 1 SCC 128
3. Binod Singh v. District Magistrate, Dhanbad AIR 1986 SC 2090

8. In the facts of the present case, the aforesaid proposition of law succinctly expounded in the case of Amratlal (supra) is squarely attracted, and therefore, the present petition is covered by the said decision. The questioned detention order is, therefore, liable to be quashed only on this ground alone without entering into the merits of other grounds of challenge. Since this ground goes to the root of the matter, other grounds are not probed meticulously upon the joint request.

9. In the result, the petition succeeds, and accordingly it is allowed. The questioned order of detention dated 24-09-2002 is quashed and set aside. The detenu is directed to be set at liberty forthwith, if not required in any other case. Rule is made absolute without any order as to costs. Direct service is permitted.

(J.N. BHATT, ACTING C.J.)

[SNDEVU]
P.S.